

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Alejandro Diaz,

Plaintiff,

v.

The Dodsworth Building, LLC, a
California Limited Liability
Company;
**The Cheesecake Factory
Restaurants, Inc.,** a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff Alejandro Diaz complains of Defendants The Dodsworth Building, LLC; The Cheesecake Factory Restaurants, Inc.; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

1 2. In July 2015, Defendant The Dodsworth Building, LLC, was the real
2 property owner of the building/parcel located at or about 2 W. Colorado Blvd.,
3 Pasadena, California.

4 3. Defendant The Dodsworth Building, LLC, is the current real property
5 owner of the building/parcel located at or about 2 W. Colorado Blvd.,
6 Pasadena, California.

7 4. In July 2015, Defendant The Cheesecake Factory Restaurants, Inc., was
8 the business owner of The Cheesecake Factory, located at or about 2 W.
9 Colorado Blvd., Pasadena, California ("Cheesecake").

10 5. Defendant The Cheesecake Factory Restaurants, Inc., is the current
11 business owner of Cheesecake.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. This Court has subject matter jurisdiction over this action pursuant to
25 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 10. Cheesecake is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 11. Restrooms are one of the facilities, privileges and advantages offered by
11 Defendants to guests at Cheesecake.

12 12. However, in July 2015, the men's restroom at Cheesecake was
13 inaccessible to wheelchair users.

14 13. In July 2015, the sink counter was more than 34 inches above the floor.

15 14. In July 2015, the sink did not offer any knee clearance to wheelchair
16 users because a metal beam or bar was mounted under the vanity, stretching
17 from wall-to-wall.

18 15. In July 2015, the restroom mirror was mounted such that its bottom
19 edge was more than 40 inches above the floor and not effectively used by
20 persons in wheelchairs.

21 16. Because of the inaccessible conditions in the men's restroom in July
22 2015, Plaintiff needed to seek assistance from a stranger to wash his hands.
23 This caused anger, frustration, and embarrassment for Plaintiff.

24 17. The sink counter is currently more than 34 inches above the floor.

25 18. The sink does not currently offer any knee clearance to wheelchair users
26 because a metal beam or bar is mounted under the vanity, stretching from wall-
27 to-wall.

28 19. The restroom mirror is currently mounted such that its bottom edge is

1 more than 40 inches above the floor and not effectively used by persons in
2 wheelchairs.

3 20. Plaintiff went to Cheesecake in July 2015.

4 21. Plaintiff personally encountered these problems.

5 22. These inaccessible conditions denied the plaintiff full and equal access
6 and caused him difficulty and frustration.

7 23. Plaintiff would like to return and patronize Cheesecake but will be
8 deterred from visiting until the defendants cure the violations.

9 24. The defendants have failed to maintain in working and useable
10 conditions those features required to provide ready access to persons with
11 disabilities.

12 25. Given the obvious and blatant violation, the plaintiff alleges, on
13 information and belief, that there are other violations and barriers on the site
14 that relate to her disability. Plaintiff will amend the complaint, to provide
15 proper notice regarding the scope of this lawsuit, once she conducts a site
16 inspection. However, please be on notice that the plaintiff seeks to have all
17 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
18 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
19 she can sue to have all barriers that relate to her disability removed regardless
20 of whether she personally encountered them).

21 26. Plaintiff alleges on information and belief that the women's restroom at
22 Cheesecake suffers from the same inaccessible conditions.

23 27. Additionally, on information and belief, the plaintiff alleges that the
24 failure to remove these barriers was intentional because: (1) these particular
25 barriers are intuitive and obvious; (2) the defendants exercised control and
26 dominion over the conditions at this location and, therefore, the lack of
27 accessible facilities was not an "accident" because had the defendants
28 intended any other configuration, they had the means and ability to make the

1 change.

2 28. Plaintiff is and has been deterred from returning and patronizing
3 Cheesecake because of his knowledge of the illegal barriers that exist. Plaintiff
4 will, nonetheless, return to the restaurant to assess ongoing compliance with
5 the ADA and will return to patronize Cheesecake as a customer once the
6 barriers are removed.

7
8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
9 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint.

14 30. Under the ADA, it is an act of discrimination to fail to ensure that the
15 privileges, advantages, accommodations, facilities, goods and services of any
16 place of public accommodation is offered on a full and equal basis by anyone
17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
18 § 12182(a). Discrimination is defined, inter alia, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,
20 or procedures, when such modifications are necessary to afford
21 goods, services, facilities, privileges, advantages, or
22 accommodations to individuals with disabilities, unless the
23 accommodation would work a fundamental alteration of those
24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 25 b. A failure to remove architectural barriers where such removal is
26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
27 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
28 Appendix "D."

1 c. A failure to make alterations in such a manner that, to the
2 maximum extent feasible, the altered portions of the facility are
3 readily accessible to and usable by individuals with disabilities,
4 including individuals who use wheelchairs or to ensure that, to the
5 maximum extent feasible, the path of travel to the altered area and
6 the bathrooms, telephones, and drinking fountains serving the
7 altered area, are readily accessible to and usable by individuals
8 with disabilities. 42 U.S.C. § 12183(a)(2).

9 31. Sinks must be mounted so that the counter or rim is no higher than 34
10 inches above the finish floor. 1991 Standards § 4.24.2; 2010 Standards §
11 606.3.

12 32. Here, the sink counter was higher than the maximum allowable height,
13 in violation of the ADA.

14 33. Sinks must provide knee clearance of at least 29 inches in height. 1991
15 Standards § 4.19.2 and Figure 31; 2010 Standards § 606.2 and 306.

16 34. Here, no such knee clearance was provided and this is a violation of the
17 ADA.

18 35. Mirrors shall be mounted with the bottom edge of the reflecting surface
19 no higher than 40 inches above the finish floor. 1991 Standards § 4.19.6;
20 2010 Standards § 603.3.

21 36. Here, the mirror was mounted higher than the maximum permitted and
22 is a violation of the ADA.

23 37. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 38. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.

28 39. Given its location and options, Cheesecake is a business that the

1 plaintiff will continue to desire to patronize but he has been and will continue
 2 to be discriminated against due to the lack of accessible facilities and,
 3 therefore, seeks injunctive relief to remove the barriers.

4
 5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 7 Code § 51-53.)

8 40. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 9 again herein, the allegations contained in all prior paragraphs of this
 10 complaint.

11 41. Because the defendants violated the plaintiff's rights under the ADA,
 12 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
 13 Civ. Code § 51(f), 52(a).)

14 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 15 discomfort or embarrassment for the plaintiff, the defendants are also each
 16 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §
 17 55.56(a)-(c).)

18
 19 **PRAYER:**

20 Wherefore, Plaintiff prays that this court award damages and provide
 21 relief as follows:

22 1. For injunctive relief, compelling defendants to comply with the
 23 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
 24 Plaintiff is not invoking section 55 of the California Civil Code and is not
 25 seeking injunctive relief under the Disabled Persons Act at all.

26 2. Damages under the Unruh Civil Rights Act which damages provide for
 27 actual damages and a statutory minimum of \$4,000.

28 3. Reasonable attorney fees, litigation expenses and costs of suit,

1 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.
2

3
4 Dated: April 21, 2016

CENTER FOR DISABILITY ACCESS

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6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
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